83-374

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

JONATHON EARL LOGAN, APPELLANT

v.

THE SUPREME COURT OF THE STATE OF IOWA;[1]
W. W. REYNOLDSON, in his capacity as
CHIEF JUSTICE OF THE SUPREME COURT OF IOWA;[2]
THE BOARD OF LAW EXAMINERS;
MAURICE B. NIELAND, as chairman of the
IOWA BOARD OF LAW EXAMINERS,
APPELLEES

ON APPEAL FROM THE SUPREME COURT

OF THE STATE OF IOWA

JURISDICTIONAL STATEMENT

Gary A. Robinson
4717 Grand
Des Moines, IA 50312
Attorney for Appellant

QUESTIONS PRESENTED

Whether the construction, interpretation, and application of Code of Iowa (1983) Chapter 610, Appendix, Court Rule 106, by the Iowa Board of Law Examiners as upheld by the Iowa Supreme Court, violates provisions of the United States Constitution, specifically;

1. Whether the construction of Court Rule 106 sufficiently conveys the legal educational requirements necessary for entrance to the Iowa bar examination, as required by the Due Process Clause of the Fourteenth Amendment.

2. Whether the rejection of Appellant's application for entrance to the Iowa bar examination is an arbitrary, capricious, unfair, and unequal application of a state law, restricting Appel-

lant's right to practice law in violation of the Fifth and Fourteenth Amendment provisions guarantying Due Process and Equal Protection.

3. Whether the application of Court Rule 106 by the Iowa Board of Law Examiners and the Iowa Supreme Court, without notice of more stringent requirements than heretofore required, and. without published amendments, violate Appellant's guaranties of Due Process and Equal Protection.

4. Whether the action by the Iowa Board of Law Examiners and the Iowa Supreme Court unduly restricts Appellant's residence in Iowa, and thereby restricts his right to travel, protected by the Equal Protection and Priveleges and Immunities Clauses of the United States Constitution.

5. Whether, by combining with the American Bar Association and the Iowa Board of Law Examiners to restrict entry into the legal profession, the Iowa Supreme Court has violated the restraint of trade provisions of the Sherman Act.

6. Whether, by the failure of the Iowa Supreme Court to give notice and provide an opportunity to be heard as required by Iowa Supreme Court Rule 7(c), Appellant was denied a property right, guaranteed by the procedural aspects of the Due Process Clause of the United States Constitution; and further, whether the Iowa Supreme Court failed to properly assess Appellant's personal qualifications and experience as required by Due Process in rendering their decision to deny entrance

to the Iowa bar examination.

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1. Supreme Court Justices named in their official capacity: Honorable Harvey Unhlenhopp; Honorable Jerry L. Larson; Honorable Louis W. Schultz; Honorable David K. Harris; Honorable Mark McCormick; Honorable Arthur L. McGiverin; Honorable James H. Carter; Honorable Charles R. Wolle.

2. Members of the Iowa Board of Law Examiners named in their official capacity: James N. Milhone, Vice-Chairman; James D. Bristol; John J. Carlin; Susan Corey; James G. Milani; Joy G. Rohm.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Constitution, Statutes, and Regulations:

IN THE SUPREME COURT OF THE UNITED STATES

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THE IOWA BOARD OF LAW EXAMINERS;[2]
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ON APPEAL FROM THE SUPREME COURT OF

THE STATE OF IOWA

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Supreme Court of Iowa is not reported. (App. A, infra). The opinion of the Iowa Board of Law Examiners is not reported, (App. B, infra).

JURISDICTION

The decision of the Iowa Board of Law Examiners (App. B) denying Appellant's application for entrance to the Iowa bar examination was entered on April 12, 1983. An Appeal from the final determination by the Iowa Board of Law Examiners was filed May 2, 1983 before the Iowa Supreme Court. On May 16, 1983, the Iowa Supreme Court entered an order (App. A) stating that Appellant's legal education was not in conformity with Iowa Court Rule 106. Appellant claimed a present right to admission to the bar examination and

preeented Federal Constitutional challenges before the Iowa Supreme Court to the construction, interpretation, and application of Court Rule 106. The Iowa Supreme Court, sitting en banc, issued an order validating the application of Court Rule 106 by the Iowa Board of Law Examiners. Said order is a final determination of the Federal Constitutional issues presented and establishes a case and controversy under Article III of the United States Constitution. The jurisdiction of this court is invoked under 28 U.S.C. 1257 (2). *In re Summers*, 325 U.S. 561; *Konigsberg v. State Bar of California*, 353 U.S. 252.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Sec. 2, Cl. 1 of the United States Constitution provides in pertinent part:

> Section 2. The citizens of each State shall be entitled to all Priveleges and Immunities of Citizens in the several States.

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be deprived of life, liberty, or property with-due process of law ...;

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the priveleges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal

protection of the laws.

15 U.S.C. Sec. 1, (The Sherman Act) provides in pertinent part:

> Every contract, combination ... or conspiracy in restraint of trade or commerce ... is declared to be illegal.

Iowa Code Annotated, (1983) Volume 40, Chapter 610, Appendix, Court Rule 106, at page 423 provides in pertinent part:

> No person shall be permitted to take the examination for admission without proof that he has received the degree of L.L.B. or J.D. from a reputable school ...:
>
> A law school fully approved by the American Bar Association ot the Iowa Supreme Court shall be deemed a reputable law school. (Amended by Court Order November 21, 1977).

Code of Iowa (1983) Sec. 553.4 (The Iowa Competition Law) at page 3045 provides in pertinent part:

> A contract, combination, ... or conspiracy shall not restrain or monopolize trade or commerce.

The 1983 Iowa Rules of Court, Supreme Court Rule 7(c) at page 443, provides:

> Notification. If the Supreme Court ... tentatively decides to submit a case without oral argument, the chief justice, or chief judge shall notify the parties of the possibility of non-oral submission and offer them the opportunity to file statements of reasons oral argument is needed and should be granted.

STATEMENT

On March 10, 1983, Appellant Jonathon Earl Logan submitted his application to sit for the Iowa bar examination.[3] In his application, Appellant indicated he had been awarded the degree of Juris Doctor from Western State University College of Law, San Diego, California. At the time of application, Appellant was aware that under Court Rule 106 as was stated at the time of his application, Western State University graduates, including but not limited to, Thomas J. Hanrahan, Don Somerville, Gary A. Robinson,[4] and Nancy

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3. Appellant was admitted to the State Bar of California and the United States District Court for the Southern District of California on June 3, 1983.

4. Gary A. Robinson is a graduate of Western State University, is admitted to and practicing in Iowa, is admitted to practice before the United States Supreme Court, and is the attorney of record for Appellant in the instant action.

Kelly had been allowed to sit for the Iowa bar examination.

Thus, Appellant, possessing the identical legal educational credentials, submitted his application with full knowledge of the foregoing, and expected the Iowa Board of Law Examiners to act favorably upon his application in accordance with its prior determination. When the Board filed their recommendation of denial of Appellant's application on April 13, 1983, (App.B) Appellant was shocked that the denial stated he failed to demonstrate the requisite legal educational requirements of Rule 106.

An appeal from the final determination of the Board was filed on May 2, 1983 before the Iowa Supreme Court, requesting oral argument as provided by Iowa Supreme Court Rule 7(c). On May 16, 1983, the Iowa Supreme Court entered an order (App. A)

stating that Appellant's legal education was not in conformity with Iowa Court Rule 106, without giving notice that the issue would be decided without oral argument. The constitutionality of Court Rule 106 was before the Iowa Supreme Court. That the court cited Rule 106 as authority for upholding the Board's decision indicates a ruling in favor of its validity, both as constructed and applied.

THE FEDERAL QUESTION IS SUBSTANTIAL

The Iowa Supreme Court has applied Court Rule 106 in such a manner so as to deny Appellant entrance to the Iowa bar examination. As indicated, other applicants possessing the identical legal education credentials has been permitted entrance to the bar examination and are now practicing in Iowa. Western State

University graduates, with a 100 per cent first time pass rate in Iowa, were admitted under Court Rule 106 as it now reads, and it has not been amended to exclude non-ABA approved law school graduates. By failing to follow their own precedent, the Iowa Court erred in denying Appellant's application for admittance to the bar examination. This Court should note probable jurisdiction to review the arbitrary and capricious exercise of power of the State of Iowa's bar admission practices under Court Rule 106.

1. Court Rule 106 as presently stated, permits entrance to the bar examination to applicants who have an L.L.B. or J.D. degree from a reputable law school, or a law school approved by the American Bar Association, or a law school approved by the Iowa Supreme Court. In view of the ruling

in Appellant's case as compared to previous Western State University graduates, the language of Rule 106 does not convey a strict adherence to any standard. "A finding of vagueness will result only where the exaction of obedience to a rule or standard ... was so vague and indefinite as really to be no rule or standard at all." *Reminga v. United States*, 695 F.2d 1000, 1005.

That the Iowa Board of Law Examiners and the Iowa Supreme Court have, in the past, found Western State University to be within the purview of the requisite educational requirements of Court Rule 106, and on this occasion have rejected Appellant's application, citing Rule 106 as authority for that rejection, establishes a clear indication that the statute itself is not couched in terms susceptible of objective measurement, by either the Court or the

the Board. "A civil statute is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment to the United States Constitution when its language does not convey a sufficiently definite warning of proscribed conduct when measured by common understanding or practice." *Incorporated City of Denison v. Clabaugh*, 306 N.W. 2d 748, 751. Iowa Court Rule 106 does not sufficiently convey a warning that Western State University would not meet the requisite educational requirements, and as measured by the past practice of the Board and the Iowa Supreme Court, Appellant had no warning that his application would be denied. "A statute is void for vagueness which forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Zwicker v. Koota*,

389 U.S. 241. "The legitimate authority of the state to impose reasonable requirements for admission to its bar encompasses the prerogative to make reasonable amendments to such requirements as these become warranted by changing conditions of the profession." *Moity v. Louisiana State Bar Association*, 414 F.Supp. 176. However, in the case of Iowa Court Rule 106, no amendments have been made since November 21, 1977 and all Western State graduates have benn admitted under Rule 106 as it currently is stated.

2. The Iowa Supreme Court has declared Constitutional as applied by the Iowa Board of Law Examiners, a statute under which graduates from Western State University have been permitted entrance to the Iowa bar examination. Appellant is a Western State University graduate whose application

was rejected based on non-compliance with the statute. "A state cannot exclude a person from the practice of law ... in a manner or for reasons that contravene the due process or equal protection clause of the Fourteenth Amendment." *Schware v. Board of Law Examiners of New Mexico*, 353 U.S. 232, 238.

In interpreting the *Schware* standard, *Louis v. Supreme Court of Nevada*, 490 F. Supp. 1174, 1183, stated, "a state can require high standards of qualification ... before it admits an applicant to its bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. The qualification must not be arbitrary; any reason for preventing a person from practicing law must be valid."

Past Western State graduates have been found capable and fit to practice law in

Iowa, yet Appellant is denied the opportunity to have his qualifications tested by the denial of his application to sit for the Iowa bar examination. "Any restriction on the practice of law must be valid, that is, reasonable and must not be arbitrary." *Hackin v. Lockwood*, 385 U.S. 960. "Typical of the cases in which the epithet 'capricious' may properly be applied are those where an agency has given different treatment to two respondents in identical circumstances." *Westering v. James*, 238 N.W. 2d 695, 703. The recommendation of the Iowa Board of Law Examiners and the subsequent denial of review of that recommendation falls squarely within the definitions of arbitrary, capricious, and unfairness as judged by its past performance in accepting Western State University as a reputable law school, permitting entrance to Iowa's bar examination by its graduates.

"The unequal application of a state law fair on its face may act as a denial of equal protection," *Yick Wo v. Hopkins*, 118 U.S. 356, 373. The essence of equal protection requirements is that "the state treat all those similarly situated similarly," *Zeigler v. Jackson*, 638 F.2d 776, 779. Appellant is in a position similar to others with identical legal educational qualifications. The Board and the Iowa Supreme Court have granted admission to residents of Iowa to its bar examination upon graduation from Western State University. The essence of equal protection requires Appellant's admission to the Iowa bar examination. The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> "No state shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the laws."

If the Iowa Supreme Court were to interpret its admission to the bar examination of past Western State graduates as a waiver of the requirements of Court Rule 106, such denial of admission to Appellant is violative of his Constitutional rights under the Fifth and Fourteenth Amendment provisions guarantying due process and equal protection. "Where waivers of a rule are not granted with consistency and no explanation is given for the disparity of treatment, a finding of denial of equal protection may be appropriate." *Zeigler v. Jackson*, 638 F.2d 776,780. When passing upon the constitutionality of the application of waivers to Nevada's ABA requirement the Court in *Louis v. Supreme Court of Nevada*, 490 F. Supp. 1174, 1183 stated;

> "It is quite clear that there would be danger to the public if the legal profession were not required to assure that lawyers have moral integrity

and professional competence. However, a state's power to license persons engaged in such a profession is not the power to create a priveleged class by means of arbitrary tests that exclude competent and fit persons. *Keenan v. Board of Law Examiners of the State of North Carolina*, 317 F.Supp. 1350. The practice of law is not a matter of the state's grace or favor. For those who possess the necessary qualifications it is a right. *Petition of Schaengold*, 83 Nev. 65, 422 P.2d 686 (1967); *Baird v. State Bar of Arizona*, 401 U.S. 1, 91 S.Ct. 702, 27 L.Ed.2d 639 (1971). The fact that the Nevada Supreme Court has historically reserved to itself the right to waive the Rule 51(3) qualification is an indication that failure of an applicant to have received a degree from an ABA approved law school is not necessarily dangerous to the public. See *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed.220 (1886).

Appellant has demonstrated that he possesses the necessary qualifications under Rule 106, both as currently stated

and as previously applied, and therefore requests entrance to the Iowa bar examination as a matter of right. The action of denial by the Board of Law Examiners and affirmance of that denial by the Iowa Supreme Court is so serious an interference with the right now under consideration and is so disturbing of equality that the action must be deemed arbitrary, capricious, and without rational basis, in violation of Constitutional mandates. "No greater burdens should be laid upon one than are laid upon the other." *Yick Wo v. Hopkins*, 118 U.S. 356.

3. The "ABA only" requirement has been upheld in those states having admission rules specifically requiring graduation from an ABA approved law school. (See *Santos v. Alaska Bar Assoc.*, 618 F.2d 575; *Ronwin v. State Bar of Arizona*, 686 F.2d

692). However, such is not the case with the Iowa Rule upon which the Board and Court place their reliance in the denial of Appellant's application. Court Rule 106 as it currently reads and has been applied, does not require graduation from an ABA approved institution. In fact, other non-ABA approved law school have graduates practicing in Iowa. (Specifically, San Fernando Valley College of Law).

Should Iowa now decide to "close the door" to graduates of Western State University, such could not Constitutionally be accomplished under the current wording of Court Rule 106. "Where more stringent requirements are imposed to obtain a professional license, some sort of "grandfather provision" is required by due process." *Berger v. Board of Psychologist Examiners*, 521 F.2d 1056. In *Louis v. Supreme Court of Nevada*, 490 F.Supp. 1174, 1184, the Federal Court

emphasized Nevada's four year advance notice before the ABA educational requirement was to take effect. The Court stated that the provision was meant to prevent hardship on those applicants who had geared their educational programs to the then existing conditions. Appellant's attendance at Western State University was from 1977 to 1981. During that time, five (5) Western State graduates were permitted entrance to the Iowa bar examination. In reliance upon this practice, Appellant had no reservations about moving his family to Sioux City, Iowa, when his wife was offered an associate attorney's position in a Sioux City law firm. To deny Appellant's request to sit for the Iowa bar examination would frustrate the purpose of his legal education and force a choice between his family, residence, and community relationships or his chosen profession. This would, in

effect, end Appellant's legal career before his qualifications ever had an opportunity to be tested in Iowa.

In *Ralston v. Turner*, 4 N.W. 2d 302, 311, the Nebraska court upheld more stringent requirements for admission to the bar examination where they were published (3) three years prior to the date they were to take effect, and (1) one year prior to petitioner's commencement of law study. In that case, the petitioner knew before his study of law commenced that his legal education would not permit his entrance to the Nebraska bar examination. A similar situation and result is presented in *In re Petition of Douglas P. Busch*, 313 N.W. 2d 419. The Minnesota Court would not permit (20) twenty graduates of the Butler University School of Law entrance to its bar examination. Here again, the students knew in advance of their commencement of

legal studies that their education would not permit them entrance to the Minnesota bar examination. They had received no indication by either notice or past practice of the Minnesota Court that any graduate of Butler University had ever qualified for admission to the Minnesota Bar. In Appellant's case, however, Western State graduates were permitted entrance to the Iowa bar examination during the years Appellant attended law school, and more stringent requirements have yet to be published or announced. This is an express indication that a Western State graduate is entitled to admission to the Iowa Bar under current Iowa Court Rules. Such denial of Appellant's entrance to the bar examination violates the protections of Due Process and Equal Protection under the Fourteenth Amendment.

4. The Iowa Supreme Court's arbitrary denial of Appellant's entrance to the bar examination unreasonably restricts his residing in and practicing his chosen profession in Iowa. "The right of Federal citizenship as reflected in the 'right to travel' carries with it the right to practice one's profession." *Lane v. West Virginia Board of Law Examiners*, 295 S.E. 2d 670. Such a restriction upon Appellant is in contravention of his constitutional "right to travel" under the Equal Protection and Priveleges and Immunites Clauses of the Fourteenth Amendment, and Article IV Section 2, of the United States Constitution. Where the application of such a regulation impacts adversely upon a "fundamental right" the state must show a compelling state interest for its application.

"The Constitutional right to travel from one state to another occupies a

position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized." *Shapiro v. Thompson*, 394 U.S. 618. "The only Constitutionally permissible state objective in licensing attorneys is to assure that the applicant is capable and fit to practice law." *Louis v. Supreme Court of Nevada*, 490 F.Supp. 1174, 1183. While the State of Iowa has an interest in assuring that its attorneys are well qualified, Western State University graduates practicing in Iowa have proven "capable and fit to practice law."

Where prior Western State graduates were permitted entrance to the bar examination, and Appellant relocated to Iowa with his family in reliance thereon, the subsequent denial of Appellant's application amounts to the placing of a condition upon his travel to and continued residence in Iowa

that he never practice his chosen profession; while others possessing identical legal educational qualifications are not so penalized. Such an unreasonable and arbitrary application of the regulation of the practice of law in Iowa manifestly subjects Appellant to disparate treatment in violation of constitutional mandates, by the discriminatory denial of the opportunity to demonstrate sufficient proficiency in the law as a prerequisite to practice. Such interpretation of the Iowa Court Rule as applied to Appellant is invalid, in that it violates the Priveleges and Immunities Clauses of Article IV, Section 2 and the Fourteenth Amendment to the United States Constitution.

5. Should Court Rule 106 be interpreted to equate only law schools fully approved by the American Bar Association as being

acceptable, such interpretation is invalid and violates Federal anti-trust laws in that there exists a combination in restraint to trade and an attempt to monopolize admission to the Iowa State Bar. The Sherman Act, Section 1, (15 U.S.C. Section 1) provides in pertinent part:

> "Every contract, combination ... or conspiracy in restraint of trade or commerce ... is declared to be illegal."

The Iowa Competition Law (Section 553.4 provides in pertinent part:

> "A contract, combination, or or conspiracy ... shall not restrain or monopolize trade or commerce."

In 1897 the Supreme Court held that every restraint of trade was unlawful under the Sherman Act, Section 1, *U.S. v. Trans-Missouri Freight Lines Association*, 166 U.S. 290. The Iowa Supreme Court, the Iowa Board of Law Examiners and the American Bar Association have combined to

restrain and monopolize the practice of law in the state by restricting entry into the profession and limiting the number of lawyers through this most recent application of Court Rule 106. In 1911, the United States Supreme Court qualified that holding so that restraints of trade were examined under a "rule of reason" to determine if they violated the Sherman Act. *U.S. v. Standard Oil Co.*, 221 U.S. 1. The Court in *Standard Oil* however, foreshadowed the formulation of per se offenses by further holding that certain restraints could conclusively presumed to be illegal without an examination of the reasoning behind them. The Iowa Court's action is not within the scope of its authority in the furtherance of any declared governmental policy or legislative scheme, in that it has delegated its responsibility to the American Bar Association, a private entity. The

policy regarding educational requisites is not actively supervised by the state itself. Therefore, the Board and the Court acted outside the scope of the legislative directives. There is no reason for the Iowa Court and Board of Law Examiners' delegation of its responsibilities, and such action results in a restraint of trade and an attempt to monopolize admissions to the Iowa State Bar.

6. Appellant was denied the Due Process of law as required by the Fifth Amendment to the United States Constitution requiring notice and opportunity to be heard. Iowa Supreme Court Rule 7(c) states in pertinent part:

> Notification. If the supreme court ... tentatively decides to submit a case without oral argument, the chief justice or chief judge shall notify the parties of the possibility of non-oral submission and offer

them the opportunity to file statements of reasons oral argument is needed and should be granted.

Appellant filed his petition for relief with the Iowa Supreme Court on May 2, 1983. The Supreme Court issued an order denying relief on May 17, 1983, without either benefit of oral argument or notification that the case would be decided without oral argument as required by Iowa Supreme Court Rule 7(c). "The right to practice law is a valuable property right which can be denied only by due process of law." *Reese v. Board of Commissioners of Alabama State Bar*, 379 So. 2d 564.

"Requirements of procedural due process must be met before a state can exclude a person from practicing law." *Willner v. Committee on Character and Fitness*, 373 U.S. 96. Appellant's petition before the Iowa Supreme Court specifically requested

oral argument under Rule 7(c); the denial of which, without notice or opportunity to be heard, abrogated the requirements of due process.

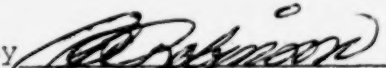
Due process additionally requires the careful consideration of evidence brought before the court which would reflect upon an applicant's ability to practice law. Appellant provided letters of recommendation from San Diego Superior Court Judge William L. Todd Jr. (App. C); Western State University Professor of Law Moise E. Berger, (App. D); and Attorney Charles R. Grebing, (App. E). As Honor Graduate of the San Diego County Sheriff's Department 43rd training academy and through (9) nine years of law enforcement experience, Appellant was able to apply the law to situations beyond the onstructional setting. Further, as a highly decorated United States Army veteran Viet Nam helicopter pilot, Appellant

evidences character, maturity, and a commitment to the good of society not found in the average bar examination candidate. It is undisputed that a state has a constitutionally permissable and substantial interest in determining whether an applicant (for admission to membership in its professional bar) possesses the character and general fitness requisite for an attorney and counselor-at-law. *Law Students Research Council v. Wadmond*, 401 U.S. 154, 159. An examination of Appellant's education, training, and experience would certainly satisfy Iowa's substantial interest in maintaining a professional bar.

CONCLUSION

If the question presented before the Court is not resolved, the Iowa Supreme Court could continue its arbitrary and discriminatory practice of admissions to

its bar. The failure to assess the merits of this case may be interpreted to condone the action of the Iowa Court. The question presented by this appeal are substantial and of great importance. Therefore, it is respectfully submitted that probable jurisdiction should be noted to permit Appellant entrance to the January 1984 administration of the Iowa bar examination.

By 

Gary A. Robinson, Attorney for
Jonathon E. Logan, Appellant
4717 Grand
Des Moines, IA 50312

(Text of order, not an original)

IN THE SUPREME COURT OF IOWA

JONATHON EARL LOGAN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	ORDER
IOWA BOARD OF LAW EXAMINERS,	)	
	)	
Respondents.	)	
	)	

This matter comes before the court on Jonathon Earl Logan's petition for review of the denial by the Iowa Board of Law Examiners of his application to take the Iowa Bar Examination.

After consideration, en banc, this court finds petitioner has failed to show that Western State University College of Law, San Diego, California, should be deemed a "reputable" law school under Iowa Supreme Court Rule 106.

It is ordered that the petition for review is denied.

Done this 16th day of May, 1983.

/s/ W.W. Reynoldson, Chief Justice

(Text of order, not an original)

BEFORE THE IOWA BOARD OF LAW EXAMINERS

IN THE MATTER OF THE APPLICATION OF

JONATHON EARL LOGAN FOR PERMISSION

TO TAKE THE IOWA BAR EXAMINATION

RECOMMENDATION OF DENIAL

TO: The Supreme Court
Mr. Chief Justice and Justices

The Iowa Board of Law Examiners has considered the application and other material furnished by Jonathon Earl Logan in his application to write the June, 1983, Iowa State Bar Examination.

Pursuant to Court Rules 100 and 106, the Board finds that the applicant has failed to demonstrate the requisite educational requirements of Court Rule 106. The Iowa Board of Law Examinaers recommends that Jonathon Earl Logan be denied permission to take the Iowa Bar Examination.

Jonathon Earl Logan is now advised

that this action is a final determination of the Iowa Board of Law Examiners under Court Rule 117.1. Subject to the provisions of Court Rule 117.1(2), the clerk of the Iowa Supreme Court is requested to remove the applicant's name from the roll of persons authorized to take the Iowa Bar Examination.

Done this 12th day of April, 1983.

IOWA BOARD OF LAW EXAMINERS

By:

/s/ Maurice B. Nieland
Chairman

(Text of Document, not an original)

Iowa Board of Law Examiners
Clerk of the Iowa Supreme Court
State Capitol Building
Des Moines, IA 50319

Attn: John Bruntz, Deputy Clerk

Re: Jonathon E. Logan

Gentlemen:

I am pleased to recommend Jonathon E. Logan as an applicant for the Iowa State Bar. Mr. Logan served as my bailiff when I served as Supervising Judge of the Juvenile Court here in San Diego. I also was able to help him obtain employment as a paralegal assisting my former partners here in San Diego. He is a young man of impeccable character and would make a fine member of the Iowa State Bar in my opinion. I recommend him wholeheartedly.

Yours very truly,

/s/ William L. Todd Jr.

(Text of Document, not an original)

May 19, 1983

The Iowa Supreme Court
State Capital
Des Moines, Iowa 50319

RE: Petition of Jonathon E. Logan v.
Iowa Board of Law Examiners

Gentlemen:

Mr. Logan has asked me to write to you outlining his accomplishments in my class and in support of his petition.

Mr. Logan attended my California Evidence Practice class during the summer semester of 1980. He was an excellent student and in fact was awarded special credit for extra class participation in a classroom trial demonstration. He would be a dedicated, conscientious member of the Bar if admitted to practice in Iowa. If you have any questions please do not hesitate to contact me.

Sincerely yours,

/s/ Moise Berger
Professor of Law

(Text of Document, not an original)

R.K. Richardson
Clerk of the Supreme Court
State of Iowa
State Capitol Building
Des Moines, Iowa 50319

Dear Sir:

It is my understanding that Jonathon Earl Logan has applied to your Court for admission to the State Bar of Iowa. The purpose of this letter would be to advise you of Mr. Logan's background experience, at least as it relates to time which he spent in our office.

Mr. Logan was hired as a legal assistant and paralegal in May of 1982. From that time until December of 1982, he worked principally for me assisting in various tasks, duties and functions relating to the practice of law. His duties and assignments included preparation of complaints and cross-complaints dealing with claims for personal injury, property damage, indemnity and declaratory relief actions dealing with coverage issues. He was also responsible for preparation of some answers and affirmative defenses dealing with technical matters concerning both real property problems and coverage problems. He prepared motions to consolidate, motions for summary judgment as well as opposition thereto, demurrers and oppositions to demurrer. Also while working in this office, he prepared motions to confirm good faith settlement for hearing by our local Superior Courts.

He prepared extensive discovery proceedings, including interrogatories to adverse parties, requests for admissions coupled with interrogatories and answers to interrogatories which

had been directed to our clients. He prepared motions compelling additional answers to interrogatories and opposition to said motions.

During the period of time he spent with our office under guidance and supervision of an attorney, he attended depositions of parties and witnesses to various actions. He was responsible for client contact and interviewing of clients, with respect to basic information, either for purposes of initial pleadings or in response to answers to interrogatories. His work has also included preparation and gathering of preliminary trial information, as well as assimilation of extensive information both in the way of medical records, earnings records and basic discovery information. He has attended and reported on court proceedings and hearings dealing with motions which have been prepared or opposed.

During the time that Mr. Logan has been employed by this firm, he has evidenced the highest degree of professionalism. He has been a trusted employee who has been assigned tasks dealing with sensitive and confidential information. His work has been exemplary and some of the results are directly attributable to the outstanding research and investigation dealing with the subjects and tasks assigned. In my opinion, Mr. Logan has demonstrated those skills, knowledge of law and trustworthiness which would cause me to recommend him to be accepted as a member of any state bar. I highly recommend him to you.

If any additional information is needed, please do not hesitate to contact the undersigned.

Very truly yours,

/s/
Charles R. Grebing

IN THE SUPREME COURT OF THE STATE OF IOWA

JONATHON EARL LOGAN;

Appellant,

vs.

No._____

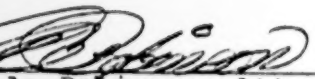
THE SUPREME COURT OF THE STATE OF IOWA; W.W. REYNOLDSON, in his capacity as CHIEF JUSTICE; THE IOWA BOARD OF LAW EXAMINERS; MAURICE B. NIELAND, as chairman of the BOARD OF LAW EXAMINERS;

Appellees,

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN, that JONATHON EARL LOGAN, the appellant named above, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Iowa, denying the petition for review from a final determination by the Iowa Board of Law Examiners entered May 16th, 1983.

This appeal is pursuant to 28 U.S.C. Section 1257 (2).

By 

Gary A. Robinson, Attorney
for Jonathon Earl Logan
4717 Grand
Des Moines, IA 50312

PROOF OF SERVICE

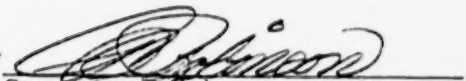
I, Gary A. Robinson, counsel of record for Jonathon Earl Logan, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 15th day of July, 1983, I served three copies of the Notice of Appeal on each of the several parties thereto, as follows:

1. On the Supreme Court of the State of Iowa and W.W. Reynoldson, Chief Justice, by delivering three copies to K. R. Richardson, Clerk of the Supreme Court of the State of Iowa, at the Iowa State Capital Building, Des Moines, Iowa.

2. On the Iowa Board of Law Examiners and Maurice B. Nieland, Chairman of the Board of Law Examiners, by depositing three copies thereof in a duly addressed evelope with first class postage in the United States mail on the 15th day of July, 1983, addressed to

Maurice B. Nieland, Chairman of the Iowa Board of Law Examiners, at the following address:

300 Toy National Bank Building
Sioux City, IA 51101

By 
Gary A. Robinson, Attorney
for Jonathon Earl Logan
4717 Grand
Des Moines, IA 50312

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No. 83-374

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

JONATHON EARL LOGAN, APPELLANT

v.

THE SUPREME COURT OF THE STATE OF IOWA,
W.W. REYNOLDSON, in his capacity as
CHIEF JUSTICE OF THE SUPREME COURT OF IOWA,
THE BOARD OF LAW EXAMINERS,
MAURICE B. NIELAND, as chairman of the
IOWA BOARD OF LAW EXAMINERS, APPELLEES

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF IOWA

SUPPLEMENT TO JURISDICTIONAL STATEMENT

Gary A. Robinson
4717 Grand Avenue
Des Moines, Iowa 50312
(515) 274-2345

Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

AUTHORITIES

No. 83-374

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

JONATHON EARL LOGAN, APPELLANT

v

THE SUPREME COURT OF THE STATE OF IOWA, W.W. REYNOLDSON, in his capacity as CHIEF JUSTICE OF THE SUPREME COURT OF IOWA, THE BOARD OF LAW EXAMINERS, MAURICE B. NIELAND, as chairman of the IOWA BOARD OF LAW EXAMINERS, APPELLEES

SUPPLEMENT TO JURISDICTIONAL STATEMENT

STATEMENT OF FACTS

Appellees place reliance on the Iowa Supreme Court unpublished order of Foytack-Kelly in denying further waivers of the ABA law school graduation requirement (Motion to Dismiss, p.9) and state Appellant should have inquired

regarding the policy of limiting bar examination entrance to graduates of ABA-approved law schools. On March 10, 1983, the Assistant Supreme Court clerk, John Bruntz, accepted Appellants' application and stated "there should be no problem since your school is accredited by many other agencies." The Foytack-Kelly order filed 4-9-81 was not mentioned. The Iowa Board of Law Examiners cited Rule 106 as authority for its denial of Appellants' entrance, not mentioning the Foytack-Kelly order. On May 2, 1983, the Executive Assistant to the Chief Justice of the Iowa Supreme Court, Paul Wieck III, inquired of the Supreme Court clerk, Keith Richardson, in the presence of Appellant's attorney, Gary Robinson, as to the Courts' policy of admission, and again, the Foytack-Kelly order was not disclosed. In the Iowa Supreme Court order of denial dated May 17, 1983,(Appellant's App. 'A' in Juris. Statement), the court relied on Rule 106 with no mention of the order or the policy regard-

ing non-ABA law school graduates. For the first time, in Appellees Motion to Dismiss, the unpublished order is brought to light to thwart the efforts of Appellant to sit for the Iowa bar.

I The Foytack-Kelly order Does Not Apply to This Appellant.

> "An order of the court does not bind persons who are not parties or privies to the proceeding." 60 CJS, Motions & Orders, §65, p.112.

Appellant was neither a party to or in privity with the persons in the prior proceeding. Since he had no opportunity to resist the order, it is not binding upon him.

> "There is no power in any court to order one who does not have the opportunity to resist the making of the order." Hall v. Wilson, 35 F.2d 189, 192 (1929).

The terms of the statute two years after the order was dated were incompatible with the order and the Iowa Supreme Court can not show an intent to discontinue the dispensation of waivers where the order was not incorporated into a statutory change and no notice was given Appelant, nor was a hearing given on the merits.

"One decision construing an act does not approach the dignity of a well settled interpretation." U.S. v. Raynor, 302 U.S. 552 (1938).

Prior interpretations of Rule 106 permitted Western State graduates entrance to the Iowa bar. The Foytack-Kelly order, absent a change in the Rule to reflect the intent of the Court, is of no effect on Appellants' application. The longstanding administrative construction is entitled to great weight, particularly where the wording of the statute is not changed. (See Saxbe v. Buston, 419 U.S. 72 1974).

II Appellees Can Not Rely on an Implied Amendment Theory.

Appellees infer that Rule 106 has been amended by the Foytack-Kelly order. In Galvan v. Hess Oil Virgin Islands Corp. 549 F.2d 281, 288 (1977), it is stated:

"Our first consideration - is a presumption against amendments by implication. If the legislature has not amended a statute, it is only in the rarest case that a court should rule the statute amended. (See e.g. U.S. v. Welden, 377 U.S. 95, 102 n12 (1964), amendment by implication not favored). To do so is to rule that a statute does not mean what it plainly says."

When Appellant applied, the statute plainly provided for a determination by the Iowa Court of "reputable" law schools. In its application, the Court permitted waivers of Rule 106, allowing non-ABA graduates to its bar. The fact that the Foytack-Kelly order is not published indicates no hearing on the merits was held, and no published change to the Rule resulted therefrom. Notwithstanding four occasions when the Iowa court or its officers had a duty to disclose the order, they declined to do so. Administrative policies affecting individual rights and obligations must be published so as to avoid the inherently arbitrary nature of unpublished ad hoc determinations. (See Morton v. Ruiz, 415 U.S. 223, 232; Anderson v. Butz, 550 F.2d 459, 463; Hotch v. U.S., 212 F.2d 280, 284). It can hardly be said that Appellant should have known of the Court's prior ruling. As the dispensation of waivers is provided for under Rule 106 as applied by prior determinations of the Court, Appellant, having applied when the rule read the same, maintains his claim of

right to admission to the Iowa bar by way of examination. The designation of Western State as not being "reputable" is not new to the Iowa court. On January 3, 1977, Western State graduate Gary Robinson was advised it was not "reputable" under the Rule (App. G). On March 28, 1977, the school was advised it was not "reputable" under Rule 106 (App. H). Neither of these resulted in changes to the Rule. However, the next day, on March 29, 1977, Robinson, who did not apply for a waiver, was permitted entrance to the exam (App. I). Both Don Somerville and John Hunt, Western graduates, were permitted entrance to the bar in 1978. In 1979, Thomas Hanrahan, a Western graduate, sat for the Iowa bar. To therefore rely on the "recently discovered" Foytack-Kelly order to keep Appellant out has no basis where previous application of the rule permitted Western graduates entrance, notwithstanding a prior designation of the school not being reputable. The only change has been the arbitrary dispensation of waivers. The Iowa court retained, and still

has, under the June 1983 amendment, authority to admit non-ABA graduates to its bar where an application was filed before the change became effective. The Rule as amended is tailored to permit Appellant entrance to the Iowa bar examination.

II Iowa Court Rule 106 Has Been Amended Effective June 13, 1983

On March 10, 1983, Appellant filed to sit for the Iowa bar exam. The Board's denial of April 13, 1983, cited Rule 106 as authority. Appellant filed Federal Constitutional challenges to the Rule in the appeal to the Iowa Supreme Court of May 2, 1983. The Court entered a denial on May 12, 1983 using 106 as authority. On June 13, 1983, Rule 106 was amended to remove discretion from the Iowa Court to find any law school "reputable", placing sole authority for admission in the ABA (App. J). It is no coincidence that Iowa has now revised the Rule. The language which Appellant attacked as being subject to vague interpretation and arbitrary application has been stricken

from the statute. This is evidence of knowledge that the rule violated Appellant's Federal Constitutional guarantees, and is a measure, remedial in nature, to conform the statute to U.S. Constitutional requirements. In Brown v. Board of Law Examiners of the State of Nev. 623 F.2d 605, 610 (1980), the court stated:

> "Where the dispensation of waivers were in fact arbitrary and capricious, the appropriate remedy would be to eliminate the Constitutional violation by changing the relevant administrative procedures."

Appellant has shown the dispensation of waivers were arbitrary and capricious. The Iowa Court has now rendered the appropriate remedy by publishing changes to the Rule which Appellant challenged as being in violation of the Federal Constitution.

> "Until lawfully changed, the administrative practice (of granting waivers) must stand as a lawful interpretation of the statute." (U.S. v. Zenith Radio Corp. 562 F.2d 1209, 1223 1977).

The fact that Rule 106 was changed only in response to a U.S. Constitutional challenge evidences an intent on the part of Appellees

to heretofore retain discretionary authority to allow for waivers for non-ABA graduates. It should be noted that the amended rule, by its wording, does not apply to Appellant as he has previously applied to take the Iowa bar examination.

CONCLUSION

Appellees position is inconsistent with their actions. They defend the Constitutional challenge Appellant has mounted to Court Rule 106 and rely on a court order which has no effect on Appellant's case. They then institute the very changes to sections of the statute which Appellant claims are in violation of Federal Constitutional mandates. Appellees further provide that the new statute requiring graduation from an ABA law school does not apply to Appellant since his application was on file before the rule was amended.

It is respectfully submitted that such inconsistencies demand the noting of jurisdiction and a hearing on the merits.

By 
Gary A. Robinson,
Attorney for Appellant
4717 Grand Avenue
Des Moines, IA 50312
(515) 274-2345

January 3, 1977

Dear Mr. Robinson,

Please be advised that on October 13, 1976, the Iowa Supreme Court refused to define Western State University College of Law of San Diego, California, as a "reputable" law school pursuant to Court Rule 106.

Therefore, you would not be permitted to take the Iowa bar examination as a graduate of Western State University, as it is not accredited and approved by the American Bar Association or the Iowa Supreme Court.

Sincerely,

/s/
R.K. Richardson
Clerk of Supreme Court

Appendix 'G'

Supplement to Jurisdictional Statement

March 28, 1977

John W. Black
Ass't Dean
Western State University
College of Law
1111 N. State College Blvd.
Fullerton, CA 92631

Dear Mr. Black,

The application of Western State University College of Law for approval under Court Rule 106 as a law school whose graduates may sit for the Iowa Bar Examination has been considered by this Court and denied.

Sincerely,

/s/
C. Edwin Moore
Chief Justice

Appendix 'H'

Supplement to Jurisdictional Statement

March 29, 1977

RE: June 1977 Iowa Bar Examination

Dear Mr. Robinson,

Your petition for waiver of the requirement of graduating from a "reputable law school" as defined in Rule 106 has been reviewed by this court which has determined that the petition should be and hereby is granted.

Sincerely,

/s/
C. Edwin Moore
Chief Justice

Appendix 'I'

Supplement to Jurisdictional Statement

IN THE SUPREME COURT OF IOWA

ORDER

IN RE AMENDMENT OF IOWA SUPREME COURT RULE 106

Pursuant to action by this court en banc, Iowa Supreme Court Rule 106 is hereby amended, effective upon the filing of this order, as follows:

Court Rule 106. No person shall be permitted to take the examination for admission without proof that he has received the degree of LL.B. or J.D. from a reputable law school fully approved by the American Bar Association; provided, however, that a student in such a reputable law school who expects to receive the degree of LL.B. or J.D. within seventy-five days from the first day of the June or January examination shall be permitted to take such examination upon the filing of an affidavit by the dean of said school stating that he expects such student to receive such degree within said time. The requirement of such affidavit is in addition to the other requirements of statute or court rule. No certificate of admission to practice law shall be issued until the applicant has received the required degree.

~~A law school fully approved by the American Bar Association or the Iowa Supreme Court shall be deemed a reputable school.~~

This amendment shall apply to persons who have not previously applied to take an Iowa Bar Examinaiton or been previously granted a waiver of the requirements of Court Rule 106.

Dated this 13th day of June, 1983.

THE SUPREME COURT OF IOWA

/s/ W.W. Reynoldson, Chief Justice

Appendix 'J'

Supplement to Jurisdictional Statement

PROOF OF SERVICE

I, Gary A. Robinson. counsel of record for Jonathon Earl Logan, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 29th day of September, 1983, I served three copies of the Supplement to Jurisdictional Statement on each of the parties thereto as follows:

1. On the Supreme Court of the State of Iowa, W.W. Reynoldson. Chief Justice by mailing three copies to K.R. Richardson Clerk of the Supreme Court, Iowa State Capitol Building, Des Moines, IA

2. On the Iowa Board of Law Examiners by mailing three copies to Maurice B. Nieland, 300 Toy National Bank Building, Sioux City, IA 51101.

3. On the Attorney General of the State of Iowa, Brent R. Appel, Deputy, by mailing three copies to Attorney General of Iowa, Hoover State Office Building, Des Moines, IA 50319.

By 
Gary A. Robinson
Attorney for Appellant

NO. 83-374

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JONATHON EARL LOGAN, APPELLANT

V.

THE SUPREME COURT OF THE STATE OF IOWA;
W. W. REYNOLDSON, in his capacity as
CHIEF JUSTICE OF THE SUPREME COURT OF IOWA;
THE BOARD OF LAW EXAMINERS;
MAURICE B. NIELAND, as chairman of the
IOWA BOARD OF LAW EXAMINERS,

APPELLEES.

ON APPEAL FROM THE SUPREME COURT

OF THE STATE OF IOWA

APPELLEES' MOTION TO DISMISS

THOMAS J. MILLER
Attorney General of Iowa

BRENT R. APPEL
Deputy Attorney General
Hoover State Office Building
Des Moines, Iowa 50319
Phone: (515) 281-5166

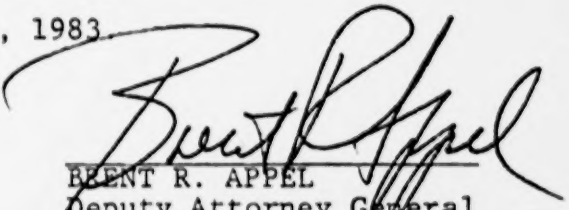
COUNSEL FOR APPELLEES

CERTIFICATE OF SERVICE

I hereby certify that I caused three copies of Appellees' Motion to Dismiss to be deposited in first class mail, postage prepaid, to Counsel for the Appellant:

Gary A. Robinson
4717 Grand
Des Moines, Iowa 50312

on September 9, 1983.



BRENT R. APPEL
Deputy Attorney General
Hoover Building
Des Moines, Iowa 50319

QUESTIONS PRESENTED

1. Whether the Iowa Supreme Court order denying waiver of Court Rule 106 to Appellant, a graduate of a non ABA accredited law school, in order to allow him to sit for the Iowa bar examination, violates due process of law.

2. Whether the Iowa Supreme Court order denying Appellant waiver of Court Rule 106 violates equal protection.

3. Whether the Iowa Supreme Court order denying Appellant waiver of Court Rule 106 violates his right to travel.

4. Whether the Iowa Supreme Court order denying Appellant waiver of Court Rule 106 violates the privileges and immunities clause.

5. Whether the Iowa Supreme Court order denying waiver of Court Rule 106 violates federal anti-trust laws.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

CASES

NO. 83-374

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JONATHON EARL LOGAN, APPELLANT

V.

THE SUPREME COURT OF THE STATE OF IOWA;[1]
W. W. REYNOLDSON, in his capacity as
CHIEF JUSTICE OF THE SUPREME COURT OF IOWA;[2]
THE BOARD OF LAW EXAMINERS;
MAURICE B. NIELAND, as chairman of the
IOWA BOARD OF LAW EXAMINERS,

APPELLEES.

APPELLEES' MOTION TO DISMISS

The Appellees hereby move this Court to dismiss the appeal herein on the ground that no substantial federal question is presented.

STATEMENT OF THE CASE

On March 10, 1983, Appellant Jonathon Logan submitted an application to sit for the

Iowa bar examination in June, 1983. His application revealed that he was a graduate of Western State University College of Law, a non ABA accredited law school. The Iowa Board of Bar Examiners entered an order (Appellant's App. B) recommending that the application be denied because applicant failed to meet the requirements of Iowa Court Rule 106, which then stated, in relevant part:

> No person shall be permitted to take the examination for admission without proof that he has received the degree of LL.B. or J.D. from a reputable law school;
>
> . . . A law school fully approved by the American Bar Association or the Iowa Supreme Court shall be deemed a reputable law school.

Appellant appealed the action of the Bar Examiners to the Iowa Supreme Court. Prior to 1981, the Iowa Supreme Court, in its discretion, granted waivers of Rule 106 to graduates of non ABA accredited schools. Court records demonstrate, how-

ever, that the waiver practice was discontinued. See In Re Foytack and Kelly, Iowa Supreme Court, April 9, 1981 (Appellees' App. A). Since that time, no graduate of a non ABA accredited law school has been allowed to sit for the Iowa bar examination.

The record before the Iowa Supreme Court reveals that the Appellant registered his intent to sit for the California bar examination upon his matriculation in law school in 1977. See "Attachment to Law Student Registration Form of Jonathan E. Logan," Appellees' App. B. Upon graduation from law school in 1981, Appellant apparently remained in California. See Residency Affidavit of Jonathan Logan, March 7, 1983 (indicating one-half year Iowa residency with Iowa driver's license issued January 3, 1983). Appellees' App. C. In February 1983, Appellant sat for

the California bar examination. See Addendum to Application of Jonathan Logan, No. 14. Appellees' App. D.

On May 16th, the Iowa Supreme Court, after considering the question en banc, denied Appellant a waiver of Court Rule 106. See Appellant's App. A. Appellant then filed the instant appeal with this Court.

ARGUMENT

I. No Substantial Question is Raised by Appellant's Claim that the Iowa Supreme Court Rule, as Applied to Appellant, Violates Due Process.

A. Appellant Lacks Standing to Assert Entitlement to a "Grandfather" Exception on a Due Process Theory.

Appellant argues that he relied upon the Iowa Supreme Court's past practice of granting waivers of Rule 106 and that, as a result, the more stringent Iowa Supreme Court policy should not be applied to him. Appellant cites two lower

court cases which appear to stand for the proposition that due process requires a "grandfather" clause to prevent undue hardship to professionals or students who rely on previous policy in making educational or professional plans. Berger v. Board of Psychology Examiners, 521 F.2d 1056 (D.C. Cir. 1975), Louis v. Supreme Court of Nevada, 490 F.Supp. 1174 (D. Nev. 1980).

But even assuming arguendo the validity of Appellant's legal contention, Appellant lacks standing to assert whatever due process protection might be available under the theory because the record shows that Appellant did not rely upon Rule 106 in making his educational plans.

Appellant enrolled in the law school at Western State University in 1977. At that time, he registered to sit for the California bar examination. According to Appellant, he did not register for the Iowa bar examination pursuant to Iowa Court Rule 112 because he "was not a resident of Iowa" and "was unaware of the rule requiring registration." See "Attachment to Law Student Registration Form of Jonathan E. Logan," Appellee's App. B. Upon his graduation, he apparently remained in California for two years and in February, 1983, he sat for the California bar. See Addendum of Jonathan Logan, No. 14. Appellant's App. D. Only recently, did Appellant decide to establish residency in Iowa and sit for the Iowa bar. See Residency Affidavit

of Jonathan Logan, March 7, 1983. Appellant's App. C.

As was stated in Louis, supra, the purpose of grandfather clauses is to prevent hardship on applicants who geared their educational programs to then existing conditions, 490 F.Supp. at 1184 (D.Nev. 1980). Under the facts of this case, however, Appellant clearly did not attend Western State University law school with an intent to sit for the Iowa Bar in reliance on Iowa Court Rule 106. He attended with a view to sit for the California bar. Appellant's assertion of a right to be grandfathered in is a post hoc effort to establish a legal basis to force the Iowa Supreme Court to depart from its established policy.

B. The Rule is not Unduly Vague.

This Court has held that non-criminal statutes are not unconstitutionally vague unless the language does not convey sufficiently definite warning as to proscribed conduct when measured by common understanding or practice. See e.g., Arnett v. Kennedy, 416 U.S. 134, 158-64 (1974). Keyishian v. Board of Regents, 385 U.S. 589, 597-604 (1967).

Under this standard as applied in this case, the Iowa Supreme Court Rule 106 passes constitutional muster. The terms of Rule 106 make it unmistakably clear that any attempt to sit for the Iowa bar examination after graduation from a non ABA law school would be extremely perilous, if not totally proscribed. Given the clear warning of the rule, it is not un-

reasonable to expect Appellant at least to inquire as to the application of the rule in contexts similar to his. If such an inquiry had been made, Appellant would have learned that the rule was strictly enforced and that the Iowa Supreme Court discontinued in 1981 its past practice of granting waivers to graduates of non ABA accredited law schools.[1]

Appellant claims to have relied upon the fact that previous graduates of Western State were allowed to sit for the Iowa bar examination. Such

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[1] The strict policy of the Iowa Supreme Court was expressly stated in In Re Foytack and Kelly, Iowa Sup. Ct., Dec. 9, 1981 (Appellee's App. A). Kelly, as admitted by Appellant, was a graduate of Western State University Law School. See Appellant's Jurisdictional Statement at 7-8.

reliance, if it occured, was misplaced. The most recent applicant cited by Appellant was in fact denied permission in an order which expressly stated that waivers of Rule 106 would no longer be granted. See Appellees' App. A. Any reliance Appellant may have placed on his mistaken information was plainly unreasonable.

C. Appellant is not Entitled to Notice and Opportunity to be Heard when Undisputed Facts Demonstrate Lack of Qualification and Where no Vested Property Right is Implicated.

Appellant objects to the lack of opportunity for a hearing before the Iowa Supreme Court. To the extent Appellant questions interpretation of the Court's own rules, the state tribunals' holding is, of

course, dispositive.[2] The only question appropriately before the Court is whether due process requires some kind of hearing given the character of Appellant's interest.

Under the facts and circumstances presented, no such hearing is required. In contrast to moral character cases, like Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963), there are no

---

[2] Appellant appears to claim that the Iowa Supreme Court violated Iowa Supreme Court Rule 7(c) which requires notification and an opportunity to file statements of reasons for oral argument in conventional adjudicative cases where the court elects submission without oral argument. The Iowa Supreme Court Rulres, however, have no application where bar admission proceedings are held under Iowa Court Rules. In bar admission matters, the applicable procedural rule is Iowa Court Rule 117.1 (2), which does not require notice of nonoral submission. See Appellees' App. E.

factual controversies here. Appellant merely is mounting a facial challenge to established Iowa Supreme Court precedent refusing to grant waivers to graduates of non ABA approved schools. Due process does not require that a state supreme court grant oral hearings to every disappointed applicant who seeks to change established requirements for admission to the bar. FCC v. WJR, The Goodwill Station, 337 U.S. 265, 274-77 (1949) (due process does not require oral argument on every issue.) See also Davis, Administrative Law, 12:1 (2nd Ed.) (1979) (no evidentiary hearing where no facts in dispute).

II. No Substantial Question is Raised by Appellant's Equal Protection Challenge.

Appellant claims violation of equal protection because past Western State graduates

have been allowed to sit for the bar examination. This contention is without merit. Appellant has not cited, and Appellee has not found, any post 1981 case where the Iowa Supreme Court granted a waiver of Rule 106 to a graduate of a non ABA accredited law school. No case of this Court prohibits a prospective change in policy by responsible authorities in the name of equal protection. To do so would freeze the status quo and prevent decision makers from responding to changes in the legal and political environments. See Dent v. State of West Virginia, 129 U.S. 114, 128 (1889) (state may alter requirements for medical profession).

III. No Substantial Right to Travel or Privileges and Immunities Questions are Raised.

Appellant claims that the Iowa Supreme Court's restrictive approach to bar admissions violates his constitutional right to travel, or, in the alternative, the

privileges and immunities clause. Admittedly, a body of case law in the lower courts does exist which questions residency requirements in the context of bar qualifications in these theories. See Sheley v. Alaska Bar Assoc., 620 P.2d 640, 645-46 (Ala. 1980), Straus v. Alabama State Bar, 520 F.Supp. 173, 179 (N.D. Alabama 1981).

But the Iowa Supreme Court action in this case had absolutely nothing to do with residency or where Appellant lives or has lived or wishes to live. The Iowa Supreme Court policy requiring graduation from an ABA approved law school applies to all applicants regardless of residency, domicile, citizenship, or any other concept that might trigger right to travel or privileges and immunities protections. Because of the non-discriminatory application of the Iowa Supreme Court policy, no constitutional question is present.

IV. No Substantial Anti-Trust Question is Present Because the Iowa Supreme Court Ruling is State Action.

Appellant claims that the policy of the Iowa Supreme Court is a restraint of trade in violation of the Sherman Act, 15 U.S.C. § 1. In Bates v. Arizona, 433 U.S. 350, 361-62 (1977), this Court held that rules and policies specifically adopted by a state supreme court, acting as sovereign, reflect a clear and affirmative articulation of state policy. As a result, the action of the Iowa Supreme Court is not within the scope of anti-trust laws, Parker v. Brown, 317 U.S. 341, 359-61 (1943).

CONCLUSION

Because no substantial federal question is presented here, the appeal should be dismissed.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

BRENT R. APPEL
Deputy Attorney General
Hoover State Office Bldg.
Des Moines, Iowa 50319
Phone: (515) 281-5166

ATTORNEYS FOR APPELLEES

APPELLEES' APPENDIX A

IN THE SUPREME COURT OF IOWA

(Filed 4/9/81)

IN THE MATTER OF THE APPLICATIONS OF ROBERT G. FOYTACK AND NANCY E. KELLY TO TAKE THE JUNE, 1981 IOWA BAR EXAMINATION.	ORDER

Robert G. Foytack and Nancy E. Kelly were denied permission to take the June, 1981 bar examination by the Iowa Board of Law Examiners for the reason that the law school they attended, Western State University College of Law, is not a law school fully approved by the American Bar Association as required by Court Rule 106. Applicants Foytack and Kelly now seek the court's permission to sit for the June, 1981 bar examination.

Western State University College of Law, San Diego, is not a law school fully approved by the American Bar Association or the Iowa Supreme Court. This court

has ended its practice of granting a waiver of this requirement under any circumstances.

It is therefore ordered that the applications of Robert G. Foytack and Nancy E. Kelly to take the June, 1981 bar examination are denied for failure to meet the requirements of Court Rule 106.

Done this 9th day of April, 1981.

THE SUPREME COURT OF IOWA

BY /s/
W. W. REYNOLDSON
Chief Justice

APPELLEES' APPENDIX B

ATTACHMENT TO LAW STUDENT REGISTRATION FORM OF JONATHON E. LOGAN

TO: The Iowa Board of Law Examiners;

May it please the Committee: I respectfully request a waiver of Iowa Court Rule 112 which states in pertinent part:

> (1) Every person intending to apply for admission to the bar of this state by examination shall, within sixty days following the commencement of law

> the study of law in an accredited law school, register with the Iowa board of law examiners . . .

At the time of the commencement of my study of law, I was not a resident of the State of Iowa. I therefore, was unaware of the rule requiring registration. As a resident of California, and a student of an accredited law school in California, I did comply with the rules and regulations regarding the registration of law students in the State of California.

* * *

/s/
JONATHAN E. LOGAN

APPELLEES' APPENDIX C

RESIDENCY AFFIDAVIT

* * *

I have been an inhabitant of Iowa for 1/2 years.

I possess an Iowa Drivers License #552-82-1652, issued 1/3/83.

I drive an automobile licensed in Woodbury County, Iowa.

I lasted voted on n/a in _____ County, Iowa.
I have not yet voted but am registered in Woodbury County, Iowa.

APPELLEES' APPENDIX D

Addendum to Application, Jonathon E. Logan

* * *

Number 14.

I sat for the California State Bar Examination in February 1983, results will be announced approximately June 1, 1983.

APPELLEES' APPENDIX E

Iowa Court Rule 117.1(2):

ADMISSION TO THE BAR

* * *

(2) Any applicant aggrieved by the final action of the Iowa board of law examiners in refusing to recommend to the supreme court of Iowa, the admission of the applicant to practice law in Iowa, for any reason other than the failure to pass the examination as set forth in paragraph (1) may, within twenty days of such final determination by said board, file a petition with the supreme court of Iowa requesting

a review by said court of such final determination. Said petition shall set forth therein specifically the reasons, in fact or law, assigned as error in the board's determination. The court may order further consideration of the application. On receipt of such an order, the chairman of the board of law examiners shall promptly transmit to the court the complete file relating to such applicant and his application, including the transcript of the record of any hearing held by the Iowa board of law examiners relating thereto. Thereafter, the court shall enter such order as in its judgment is proper. Said order shall thereupon become final, without further review or appeal.

No. 83-374

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

JONATHON EARL LOGAN, APPELLANT

v.

THE SUPREME COURT OF THE STATE OF IOWA,
W.W. REYNOLDSON, in his capacity as
CHIEF JUSTICE OF THE SUPREME COURT OF IOWA,
THE BOARD OF LAW EXAMINERS,
MAURICE B. NIELAND, as chairman of the
IOWA BOARD OF LAW EXAMINERS, APPELLEES

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF IOWA

APPELLANTS' OPPOSITION TO APPELLEES' MOTION TO DISMISS

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Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

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APPELLANTS' OPPOSITION
to
APPELLEES' MOTION TO DISMISS

The Appellant hereby files the following opposition to Appellees' Motion to Dismiss.

ARGUMENT

I. A Substantial Federal Question is Raised By Appellant's Claim that Iowa Court Rule as Applied Violates Due Process Guarentees.

A. Appellant Has Standing to Assert Entitlement to a "Grandfather" Provision.

Appellees assert a "grandfather" provision should not be applied to Appellant because he did not rely upon Iowa Court Rule 106 in making his educational or professional plans. (Appellees' Motion to Dismiss, pp 5-7), and that assertion of a right to be grandfathered in is an effort to force the Iowa Supreme Court to depart from its established policy. As is stated in Louis v. Supreme Court of Nevada, 490 F.Supp. 1174, 1180 (1980):

> "One who attends an unaccredited law school knowing it may preclude her admission to practice in the state of her choice cannot complain when she is excluded from practice for that reason."

What Appellant knew was that Western State graduates were being admitted to practice in Iowa during the time he attended law school. He therefore expected to be admitted, by virtue of this established policy, to the bar examination to carry out his professional

plans, and had no reservations about moving to Iowa when his wife secured employment in Sioux City. Appellants' education comported with Iowa's established policy of admitting Western State graduates to its bar, and until June, 1983, no published amendment to Rule 106 existed which would lead him to believe otherwise. Appellant reviewed the published Court Rules regarding admission to the bar of Iowa to insure no changes had occurred since past Western State graduates were admitted. Appellees can cite no authority which requires a law student to register in every state where he is entitled to sit for the bar exam. No Western State graduate was denied admission because of failure to register as a law student and such registration was not required to be submitted with Appellant's application for the January 1984 exam. The argument that Appellant must have attended law school with an intent to practice in Iowa before a "grandfather" provision will permit entrance is not base on any precedent. The states of Louisiana, (Moity v. La. State Bar Assoc. 414 F.Supp. 176), Tennes-

see, (Petition of Stayton, 537 S.W. 2d 703), Nevada, (Louis, supra), Montana, (Amendments to Bar Admission, 609 P.2d 263), and Indiana, (Buxton v. Lovell, 559 F.Supp. 979), have published grandfather provisions where the requirements for attaining a professional license have been changed by publication. Iowa Court Rule 106 read the same when Appellant applied as when past Western State graduates were admitted.

B. The Rule is Unduly Vague

Appellees place reliance on the Iowa Supreme Courts' unpublished order of Foytack-Kelly in denying further waivers (Motion to Dismiss, p. 9) and state Appellant should have inquired regarding the policy. On March 10, 1983, the Assistant Supreme Court clerk, John Bruntz, accepted Appellant's application stating, "here should be no problem since your school is accredited by many other agencies." No mention was made of the Foytack-Kelly order. The Iowa Board of Law Examiners cited Court Rule 106 as authority for its denial of Appellants' entrance, not the Foytack-Kelly order.

On May 2, 1983, the Executive Assistant to the Chief Justice of the Iowa Supreme Court, Paul Wieck III, inquired of the Supreme Court clerk, Keith Richardson, in the presence of Appellant's attorney, Gary Robinson, as to the Court's policy of admission and again, the Foytack-Kelly order was not mentioned.

In the Iowa Supreme Courts' order of denial dated May 17, 1983, the court relied on Rule 106 with no mention of the policy regarding non-ABA law school graduates.

For the first time, in Appellees' Motion to Dismiss, the unpublished order is brought to light and used as authority to thwart the efforts of Appellant to sit for the Iowa bar examination. There can be no doubt that such bad faith failure of the Iowa Board of Law Examiners, the Iowa Supreme Court, and the Supreme Court Clerk to advise Appellant of the unpublished "policy," or to amend Rule 106 to reflect that policy, resulted in Appellant expending a great amount of time, money, and effort in his attempt to sit for

the Iowa bar. The fact that neither Appellant, his attorney at the State level, or his attorney in the Federal forum were advised of the Foytack Kelly order indicates insufficient notice of the change in policy of approval of waivers. An applicant for admission to the Iowa bar would become aware only of bar admission requirements as published, not any unpublished policy to the contrary. The fact that Iowa retained statutory descretion to find a law school "reputable" notwithstanding an unpublished order is more reason to find their action against Appellant in violation of Federal Constitutional Due Process mandates.

C. Appellant was Denied Due Process of Notice and Opportunity to be Heard on Disputed Facts at the State Supreme Court level.

Appellees would have this Court believe the only fact in dispute is whether or not Appellant graduated from an ABA law school. The fact in dispute is whether the Iowa Supreme Court violated Due Process mandates of the Federal Constitution in its application of

Rule 106 and giving no notice or hearing regarding that decision. The Federal Court in Pennsylvania stated:

> "Waivers of the ABA accreditation requirement...may not be granted or denied arbitrarily or capriciously, or without definable reasons or standards, but must be granted in accordance with due process guarantees." Murphy v. Egan, 498 F.Supp. 240 (1980).

In In Re Costello, 401 A.2d 447, the Rhode Island Supreme Court overturned the Board of Law Examiners decision to deny an applicant admission to the bar exam where the denial was issued without assessing the merits of a waiver of the ABA requirement. The orders issued by the Iowa Board and Supreme Court make it clear the merits of Appellant's request were not assessed, since they do not address the issue of waiver, and a hearing should have been granted. Appellees rely on FCC v. WJR, 337 U.S. 265, stating at page 12 of the Motion to Dismiss,

> "Due process does not require that a state supreme court grant oral hearings to every disappointed applicant who seeks to change established requirements for admission to the bar."

Appellees reliance is misplaced as Appellant is not trying to change established requirements for admission. He is applying for admission under the same rule as worded when past Western State graduates were admitted. Appellees give no legal authority to show that bar applicants have any less claim to due process guarantees than do other citizens.

> "Applicants for admission to the bar by way of the waiver procedure are entitled to know the criteria which must be met in order to be granted a waiver," Murphy at 244.

Appellant applied to the Iowa bar by way of a waiver and neither the Board or the Iowa Supreme Court advised him of any prior determinations on which they relied in making their determination of Appellants' unfitness.

> "The touchstone of due process is protection of the individual against arbitrary action of the government," Black v. Sullivan, 561 F.Supp. 1050, 1061 (1983).

Appellees reliance on Dent v. West Virginia 129 U.S. 114 is misplaced since Dent refers to a published changed statute, and Court Rule

106 read identically when Appellant applied as when past Western State graduates were admitted.

II. The Equal Protection Challenge of Appellant is Substantial.

Again, Appellees reliance on Dent, supra is incorrect as Dent addresses published alterations to admission. Court Rule 106 as published when Appellant applied permitted discretionary granting of waivers by the Iowa Supreme Court and it was their practice to do so. To deny Appellant entrance is to deny him Equal Protection guarantees. (Refer to Appellants' Suplement to Jurisdictional Statement.)

III. Appellants Right to Travel is Restricted.

Appellees state the decision by the Court of Iowa has no effect on where he lives in that all Iowa attorneys are ABA school graduates. This has no basis in fact as graduates from Cuban law schools have been permitted entrance as well as those mentioned in Appellants'

Jurisdictional Statement. Appellees state the Supreme Courts' policy is non-discriminatory, yet despite numerous occaisions giving rise to a duty to disclose, Appellant was never advised of the Foytack-Kelly order. Such action clearly presents questions of Equal Protection violations.

IV The Anti-Trust Question is Substantial.

Appellees rely on Bates v. Arizona, 433 U.S. 350, to show a clear articulation of state policy removes them from anti-trust provisions. However, no clear and affirmitive articulation of state policy was presented until Rule 106 was amended. (Refer to Supplement to Jurisdictional)

CONCLUSION

A claim of right to admission to the Iowa bar has been denied by judicial order. Federal questions are raised and the appeal is a proper Article III controversy.

Respectfully submitted.

By 
Gary A. Robinson, Attorney
for Appellant Jonathon E.
Logan

PROOF OF SERVICE

I, Gary A. Robinson, counsel of record for Jonathon Earl Logan, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 29th day of September, 1983, I served three copies of the Appellants' Opposition to Appellees' Motion to Dismiss on each of the parties thereto as follows:

1. On the Supreme Court of the State of Iowa, W.W. Reynoldson, Chief Justice by mailing three copies to K.R. Richardson Clerk of the Supreme Court, Iowa State Capitol Building, Des Moines IA.

2. On the Iowa Board of Law Examiners by mailing three copies to Maurice B. Nieland, 300 Toy National Bank Building, Sioux City, IA 51101.

3. On the Attorney General of the State of Iowa, Brent R. Appel, Deputy, by mailing three copies to Attorney General of Iowa, Hoover State Office Building, Des Moines, IA 50319.

By 
Gary A. Robinson
Attorney for Appellant